

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDRES SCAMINACI,

Plaintiff,

-against-

OMAR JAFFREY,

Defendant.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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DATE FILED: 1/22/2021

21-cv-321 (MKV)

ORDER DENYING MOTION FOR  
PRELIMINARY INJUNCTION  
AND MOTION TO INTERVENE

MARY KAY VYSKOCIL, United States District Judge:

On January 14, 2021, Plaintiff filed a motion for a preliminary injunction [ECF #4, 6, 7, 8]. The same day, the Court issued an Order directing Defendant to respond by January 19, 2021 and scheduling a hearing for January 22, 2021 [ECF #10]. Defendant timely filed his response in opposition to the motion for a preliminary injunction [ECF #14, 16, 17, 18]. At the same time, Melody Wireless Infrastructure, Inc. (“MWI”) filed a motion to intervene in this action for the limited purpose of opposing Plaintiff’s motion for a preliminary injunction, together with a brief in opposition to Plaintiff’s motion [ECF #13, 20, 21, 22, 23, 26, 27, 28, 29]. On January 21, 2021, Plaintiff filed a response in opposition to the motion to intervene [ECF #31, 32, 33, 34]. The Court held a hearing on January 22, 2021.

As the Court explained on the record at the hearing, the motion of MWI to intervene in this action, pursuant to Rule 24 of the Federal Rules of Civil Procedure, is DENIED. To intervene as of right, pursuant to Rule 24(a), “an applicant must (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.” *In re Bank of N.Y. Derivative Litig.*, 320 F.3d 291, 300 (2d Cir. 2003). For permissive intervention, pursuant to Rule 24(b), “the court considers substantially the same

factors.” *R Best Produce, Inc. v. Shulman-Rabin Mktg. Corp.*, 467 F.3d 238, 240 (2d Cir. 2006).

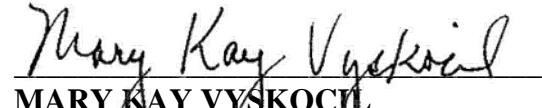
The Court found that Defendant more than adequately represents the interests of MWI in opposing Plaintiff’s motion for a preliminary injunction. The Court deemed the brief that MWI filed in opposition to Plaintiff’s motion, and which the Court reviewed, an amicus brief. *See Bldg. & Realty Inst. of Westchester & Putnam Cty., Inc. v. New York*, No. 19-cv-11285, 2020 WL 5667181, at \*8 (S.D.N.Y. Sept. 23, 2020).

The Court now rules that Plaintiff’s motion for a preliminary injunction is DENIED. A preliminary injunction “is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Moore v. Consol. Edison Co.*, 409 F.3d 506, 510 (2d Cir. 2005). The Court finds that Plaintiff has not carried his burden under Federal Rule of Civil Procedure 65(a). The Court will fully explain its reasoning in a forthcoming opinion.

The Clerk of Court is respectfully directed to terminate the motion pending at docket entry 13.

**SO ORDERED.**

Date: January 22, 2021  
New York, NY

  
MARY KAY VYSKOCIL  
United States District Judge